IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 716 OF 2004

Balasaheb Shripatrao Ghorpade ... Appellant

V/s

Dudhganga Co-op. Dairy Society, Kagal. ... Respondent

Mr. A.B. Borkar for the appellant.

Mr. P.R. Arjunwadkar for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 18TH AUGUST, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Kolhapur, dated 10.12.2003 dismissing the appeal of the plaintiff and confirming the judgment and decree passed by the Civil Judge, Jr.Divn., Kagal dated 2.5.1997 dismissing the plaintiff's suit for declaration and perpetual injunction against the defendants.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiff filed the suit for the relief of injunction restraining the defendants from obstructing his possession and enjoyment over the suit property being City Survey Nos. 1367 and 1368 admeasuring approximately 341.6 metres, situated within the limits of town Kagal, Dist. Kolhapur. According to the plaintiff, he is owner in possession of the suit property which is ancestral one. He got the said property measured through Taluka Inspector of Land Records on 12.6.1981 and has possession over the same. Defendant No.1 has in its property bearing No. 1358 to the north side of the suit property. It is alleged that the defendant tried to get the name of the defendant recorded in the suit property and for that purpose the defendant fabricated some documents and obstructed his possession and hence the suit.

Defendants contested the suit inter-alia submitting that the allegations made by the plaintiff were false and there was no question of encroachment over the suit property or obstruction to the possession of the plaintiff’s property and sought dismissal of the suit.

4. The learned Trial Judge adjudicated the dispute on

merits and came to the conclusion that the plaintiff had failed to prove his title to the suit property and also failed to prove his possession thereof and, as such, the suit came to be dismissed.

5. The appeal was carried to the District Court, Kolhapur. The learned Ad-hoc Addl. District Judge, Kolhapur, after hearing both parties, concurred with the findings recorded by the Trial Court and dismissed the appeal. Hence the present appeal.

6. At the outset, it may be noted that there is absolutely no substantial question of law involved in this case. The learned counsel for the appellant submitted that both the Courts below have failed to appreciate the documentary evidence as well as the admissions given by the parties on record and, as such, the suit came to be dismissed. However, in this regard, it must be noted that both the Courts below have properly appreciated the entire evidence on record. The so-called admissions given by the defendants in respect of the identity of the property, in my considered view, is of no use unless it is supported by documentary evidence which was available for the purpose of scrutiny i.e. City Survey record. However, the City Survey

record brought on record is not only vague but has confused the entire issue and it is unable to show that erstwhile C.T.S. Nos. 1367 and 1368, were the same which are now numbered as C.T.S. No. 613 which belongs to the plaintiff. In fact, the record shows contrary circumstances. Be that as it may, it is clear that the plaintiff has failed to prove his case and, therefore, both the Courts below have rightly concluded that the plaintiff must fail in his suit. I do not propose to interfere with the concurrent findings recorded by both the Courts below.

In the result, the appeal stands dismissed with no order as to costs.

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